

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 27, 2021

1:07 p.m.

DRAFT

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Matt Claman, Vice Chair (via teleconference)
Representative Geran Tarr
Representative Andi Story

MEMBERS ABSENT

Representative Sarah Vance
Representative James Kaufman
Representative David Eastman

OTHER LEGISLATORS PRESENT

Representative Sara Hannan (via teleconference)

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5

"An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 55

"An Act relating to participation of certain peace officers and firefighters in the defined benefit and defined contribution plans of the Public Employees' Retirement System of Alaska; relating to eligibility of peace officers and firefighters for medical, disability, and death benefits; relating to liability of the Public Employees' Retirement System of Alaska; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 5

SHORT TITLE: SEXUAL ASSAULT; DEF. OF "CONSENT"

SPONSOR(S): REPRESENTATIVE(S) TARR

02/18/21 (H) PREFILE RELEASED 1/8/21
02/18/21 (H) READ THE FIRST TIME - REFERRALS
02/18/21 (H) STA, JUD
03/26/21 (H) SPONSOR SUBSTITUTE INTRODUCED
03/26/21 (H) READ THE FIRST TIME - REFERRALS
03/26/21 (H) STA, JUD
03/27/21 (H) STA AT 1:00 PM GRUENBERG 120

BILL: HB 55

SHORT TITLE: PEACE OFFICER/FIREFIGHTER RETIRE BENEFITS

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

02/18/21 (H) PREFILE RELEASED 1/15/21
02/18/21 (H) READ THE FIRST TIME - REFERRALS
02/18/21 (H) STA, FIN
03/13/21 (H) STA AT 1:00 PM GRUENBERG 120
03/13/21 (H) Heard & Held
03/13/21 (H) MINUTE(STA)
03/27/21 (H) STA AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE GERAN TARR

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HB 5 as the prime sponsor and provided a PowerPoint presentation, titled "House Bill 5: Defining Sexual Consent," dated 3/27/21.

LISA ELLANNA

Nome, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 5.

DARLENE TRIGG

Nome, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 5.

KEELY OLSON, Executive Director

Standing Together Against Rape Alaska

Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony pertaining to HB 5.

TAYLOR WINSTON, Executive Director
Alaska Office of Victims' Rights
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 5.

BRIAN HOSKEN, Student Services Director
Alaska School Activities Association
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony pertaining to HB 5.

REPRESENTATIVE ANDY JOSEPHSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a review of HB 55 as the prime sponsor.

PAUL MIRANDA, President
Alaska Professional Fire Fighters Association
Anchorage, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation, titled "Costs of Maintaining the Status Quo."

TOM WESCOTT
Alaska Professional Fire Fighters Association
Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 55.

ELISE SORUM-BIRK, Staff
Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 55.

ACTION NARRATIVE

[1:07:11 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 1:07 p.m. Representatives Story, Tarr, Claman (via teleconference), and Kreiss-Tomkins were present at the call to order.

Representatives * arrived as the meeting was in progress. Also present was Representative Hannan (via teleconference).

^#hb5

HB 5-SEXUAL ASSAULT; DEF. OF "CONSENT"

[1:09:20 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5, "An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

[1:09:34 PM](#)

REPRESENTATIVE GERAN TARR, Alaska State Legislature, prime sponsor, introduced HB 5 with a PowerPoint presentation, titled "House Bill 5: Defining Sexual Consent" [included in the committee packet]. She began on slide 2, titled "How was HB 5 drafted?" She explained that the issue was brought to her attention by Standing Together Against Rape (STAR), an organization that knew firsthand how the law has failed to achieve justice for Alaskans who had been raped or sexually assaulted. She noted that the law in question has not been updated in forty years. The legislation before the committee today is the culmination of a two-year process involving statewide meetings with input from across Alaska, expert interviews, and feedback from the Department of Law (DOL), which is reflected in the sponsor substitute (SS) changes. She discussed her presentation at the statewide meeting for the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), highlighting the significance of receiving their feedback. She continued to slide 3 and emphasized the importance of doing "more listening than talking." She said she wanted to understand what's happening in Alaskan communities; how people are feeling safe or unsafe; and how this law impacts that safety.

[1:13:07 PM](#)

REPRESENTATIVE TARR turned to slides 4 and 5, which questioned "Has consent ever been [an] issue for you?" She stated that every individual at all the forums she hosted or participated in were asked that question and all, without exception, answered yes. She moved to slide 6 and addressed consent, noting that it

is not defined in Alaska statute. Instead, AS 11.41.470(8) defines "Without consent" as follows:

(8) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

(B) is incapacitated as a result of an act of the defendant.

REPRESENTATIVE TARR relayed that this explanation is problematic for several reasons: firstly, it is not an affirmative definition; secondly, it suggests a use of force; and thirdly, it places the burden on the victim. She continued to slides 7 and 8 and reviewed Minnesota and Montana's statutory definitions of consent, both of which make reference to the phrases: words or overt actions, freely given arrangement/agreement, and current/prior social or sexual relationship. Slide 9 highlighted themes in modernized statutes, including an affirmative definition that contains the following words: freely given, agreement, reversible, and words/actions. She turned to slide 10 and presented the new definition proposed in HB 5, which read:

"Consent" means a freely given, reversible agreement specific to the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in the act was positively expressed by words or action.

REPRESENTATIVE TARR noted that the definition of "freely given" is one difference in the sponsor substitute from the original version of the bill at the recommendation of DOL.

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REPRESENTATIVE TARR directed attention to slides 11 and 12 and provided a sectional analysis of the bill, which read as follows:

Sections 1 and 2: Rape by Fraud

Sections 3 and 4: Predatory behavior by much older adults engaging in sexual relationships with teenagers at least ten years younger

Section 5: Addressing circumstances in which consent can be given

Section 6: New definition of consent

Sections 7 and 8: Updates the definition of consent

Section 9 refers to the updated Military Code of Justice

Section 10: Requires rape kits be tested within six months

Section 11: Repeals the old definitions

Section 12: Law applies to crimes committed after the effective date

Section 13: Effective date for rape kit testing is July 1, 2023

REPRESENTATIVE TARR explained that Sections 1 and 2 add a new crime, "rape by fraud," into statute. Rape by fraud suggests that a person commits sexual assault by pretending to be someone else. Sections 3 and 4 amend the sexual abuse of a minor statute. She noted that currently, Alaska law does not differentiate between a 16-year-old and someone who is 22 or 30 years of age. Section 5 addresses the circumstances in which consent can be given. She pointed out that the sponsor substitute includes changes from the previous version, such that "rape by fraud" language is removed and "professional purpose" is defined on page 5, lines 8-15, to Section 5, paragraph (2), for clarity at the recommendation of DOL. She noted that Section 5, paragraph (3), addresses freezing - a common trauma response. Sections 7, 8, and 9 are conforming language, as it relates to the consent definition. She read the summary of Sections 10-13 and noted that Section 13 accommodates more time for the effective date for rape kit testing at the recommendation of the crime lab.

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REPRESENTATIVE TARR continued to slide 13 and outlined the desired outcomes: firstly, to remove dangerous people from Alaska's communities to prevent them from harming others; secondly, to educate Alaskans about consent to prevent harm from

happening. She turned to slide 14 and conveyed that HB 5 is the solution. She detailed a February 10, 2020 KNOM article that explored "[changing] the law to make prosecution for rape more possible." The article referenced the law under consideration in today's meeting and read:

Some said an outdated statute dealing with consent ensures most sexual assault cases won't result in convictions. Advocates and survivors say it's time for some of those laws to change.

[1:25:33 PM](#)

REPRESENTATIVE TARR moved to slide 16 and concluded by posing the following questions:

What is the appropriate criminal justice system response based on the human suffering caused to the survivor?

How much of a danger does this person pose to the community and how long should they be removed from the community so they can no longer cause harm?

How much do we want to invest to improve public safety and reduce sexual assault in Alaska?

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CHAIR KREISS-TOMKINS opened invited testimony.

[1:26:38 PM](#)

LISA ELLANNA, a survivor herself, informed the committee of her experience as an advocate for survivors of sexual assault. She recalled that when survivors gathered to provide support for one another, it became clear that none of their cases were investigated by the local police department. The group proceeded to insert themselves in positions on commissions and boards to spark the conversation around improving the police department's investigation and training efforts. She explained that over the course of several years, they encountered heavy resistance from the police department. The group decided to take a different approach and bring the issue to a public forum before the city council, which prompted a cascade of events: 460 cases of sexual assault were revealed, which had been reported to the police department over the course of decades and went

uninvestigated; the chief of police left the force; and the city manager resigned. She added that they also began to take a community approach to the issue and in the process, realized that Alaska's consent laws are inadequate. She pointed out that over 90 percent of reported cases did not lead to a conviction. She acknowledged that the issue is a difficult one. When an individual tells someone that he/she was a victim of sexual assault it is often reported to law enforcement, which - if the system is responsive - inserts the victim into a legal process that is retraumatizing. She explained that there are fears associated with reporting [sexual assault] and a lot of weight is placed on the victim's decision, so rates of reporting are most likely low. In closing, she stated that this bill needs to pass. She said it provides context for police to understand consent and investigate, as well as a mechanism for district attorneys to provide tools to hold perpetrators accountable.

[1:31:10 PM](#)

DARLENE TRIGG informed the committee that she is a community advocate [for sexual assault] in Nome. She contextualized the importance of this legislation by explaining what it's like for women to live in a state that's not safe for them. She conveyed that victims had lost faith in the police force and criminal justice system, adding that many victims were assaulted more than once, which leads to victims saying, "why tell police when they're not going to do anything anyway." As a result, in Nome in particular, the current state of affairs is so poor that victims are often hospitalized for suicide attempts and other self-destructive coping mechanisms. She said she acknowledges that living with the current laws creates a culture of safety for perpetrators. She shared her belief that women do not know what it is to be safe because they need to put up walls and always be aware, which holds them back from being productive and safe community members.

[1:33:59 PM](#)

KEELY OLSON, Executive Director, Standing Together Against Rape (STAR) Alaska, stated that in 2018, STAR's board of directors formed a policy committee to help educate and inform lawmakers about existing challenges in the sexual assault statutes informed by the lived experiences of survivors. One such policy priority included updating the state's definition of consent. Given that Alaska has the highest rates of rape in the nation, she said, it seems logical to provide law enforcement and prosecutors with more tools to effectively prosecute rape. She

explained that the state's current definition of "without consent" places the burden on the victim to prove that force or threats were used; further, it requires the state to try and prove the victim was incapacitated to the point of being unable to consent. She pointed out that in practice, this is a very high burden that leads jurors to expect the victim to have sustained significant and visible injury, which is often not the case. A growing understanding of trauma response indicates that a victim often freezes rather than fighting or fleeing. She noted that the statute does not account for a victim crying throughout the assault and not fighting back. She relayed STAR's additional policy priorities, including urging the state to do more to protect minors - ages 16 and 17 - from targeted victimization. She reported that under questioning, offenders often tell the police that "16-year-olds are fair game," suggesting that they are legal, and maintaining that [the victim] consented, which places the burden of proof on law enforcement. These cases often involve the offender proffering teens with alcohol and drugs to render them incapable of escape and less likely to report for fear of not being believed or, in some cases, being charged with underaged drinking when they do report. She said STAR receives numerous calls on its statewide sexual assault crisis line from parents seeking support and ways to help their teens who were manipulated into a relationship with a much older adult. In such cases, the parents are often powerless to order the adult to stay away from their child. She pointed out that impressionable youth are often led to believe by a predatory adult that they are mature and special, which drives a wedge between them and their family support. In Alaska, the state only protects teens from adult predatory behavior if the adult holds a position of authority over the child. She shared her belief that the state should be doing more to protect its youth particularly during formative years rather than treating them as grown adults.

MS. OLSON detailed several cases that involved the use of trickery or fraud to gain sexual gratification by the offender. She remarked:

In one case, a woman awoke to her husband spooning her from behind in bed. As was standard in their intimate relationship, she reached into the bedside drawer for a condom, which she provided to her husband over her shoulder without glancing back. They engaged in sexual relations. At some point during the encounter, to her horror, she realized the man in her bed was not her husband at all. In fact, it turns out he was a

homeless man who snuck into her house through an unlocked door after her husband left for work early and climbed into her bed. It's not known and was never substantiated that he had been stalking and watching her for some time. As soon as she realized this man was a stranger she jumped up and called the police. The suspect fled but was later apprehended. Since he did not use force, he could not be held accountable for rape. I believe he was ultimately prosecuted for illegal entry to her home.

Another case involved a young woman living with her fiancé and his family. Their room was in a dark basement. She was in bed one night when her fiancé entered. She called out his name and he answered affirmatively. They began engaging in sexual relations. At some point during the activity, she came to realize this was not, in fact, her partner, but rather his brother pretending to be him. She screamed, he fled, and she reported to law enforcement with the support of her fiancé. Although the state attempted prosecution, the offender was acquitted by a jury because the state could not show force was used in this case.

MS. OLSON noted that these are just several cases in which fraud was used to induce consent. She added that the frequency of such cases is unknown because most do not result in a sex offense charge, so they remain invisible.

[1:40:11 PM](#)

REPRESENTATIVE STORY thanked Ms. Ellanna and Ms. Trigg for sharing their experiences and expressed her appreciation for women's advocacy.

[1:40:53 PM](#)

TAYLOR WINSTON, Executive Director, Alaska Office of Victims' Rights (OVR), informed the committee that she is testifying in support of HB 5 as both the executive director of OVR and a former state prosecutor of sexual offenses. She highlighted her thirteen years of experience as a state prosecutor, six of which were spent supervising the sexual offense unit in the Anchorage District Attorney's office. She noted that as the supervisor, she screened virtually every sexual offense case that came into the Anchorage office during those six years. She shared her

belief that amending the statutes, particularly SA1 [Sexual Assault in the First Degree], SA2 [Sexual Assault in the Second Degree], SAM1 [Sexual Abuse of a Minor in the First Degree], SAM2 [Sexual Abuse of a Minor in the Second Degree], and the definition of "consent," is important and long overdue. She recalled seeing "quite a few" cases in which these amendments were needed in her role as a prosecutor. She said the comments from previous testifiers are encapsulated in her experience, adding that this legislation would help close a loophole with regard to SA1 and SA2 in Sections 1 and 2 of the bill. She agreed with Ms. Olson that it is difficult to quantify the number of victims that would receive justice from this change, in part, because if sexual assault is reported, it might not go further than the level of investigation since the statute does not allow it. She explained that closing the loophole would allow those who had been victimized to have justice where they were previously denied; additionally, it would potentially keep others from becoming victims.

MS. WINSTON recounted her experience prosecuting a case that involved fraud. She said upon being handed the case, she immediately questioned her supervisor about the statutes, saying "[the victim] appears to consent to the sexual activity, but not consenting to the person who was doing the sexual activity with her." Her supervisor reassured her, she prepared the case and took it to trial. She remembered that the victim, who was asleep at the time of the assault and thought the defendant was her fiancé, shared compelling testimony; however, the jury ultimately acquitted the defendant, providing no justice to the victim for being violated. She pointed out that the case was tried on the victim's unawareness of the sexual assault. The issue of consent, or lack thereof, was also argued. Ultimately, she said it was a sad case for the victim and the system as a whole, adding that the loophole should be in the law, which this bill hopes to cure.

MS. WINSTON addressed Sexual Abuse of a Minor in the First and Second Degree. She related that the law covers 16 and 17-year-olds if the perpetrator is in a position of authority but does nothing for them if the perpetrator is not in such a position. She stated "yes, we can talk about the age of consent, but the people who engage in sex with children who are more than 10 years older than them are predators." She added that these are not people who are looking to form a healthy relationship from normal interactions, rather, they are people who seek out children and groom them at a vulnerable age. Furthermore, she relayed that when the abuse from this older person comes to

light, it has devastating emotional effects, such as suicide, cutting, drug and alcohol abuse, and other destructive behavior. It can also create a wedge between the child and his/her family. She recalled a number of cases that relied on the discretion of the judge to deem whether the situation was aggravated and might warrant a higher sentence; however, there was often no reflection of aggravation through the statutory aggravators, so there was no justice for the victim. She stressed the "intense ripple effect" that occurs throughout the victim's life, which is forever changed. She said it has an immense cost to society on health and human services, work productivity, and criminal behavior. She went on to point out that the current [sexual assault] laws predate the invention of the internet, which has allowed offenders an easier way to prey on vulnerable children. In closing, she reiterated that the consent sections are important because they would provide clarity for jurors and lessen the burden on victims.

REPRESENTATIVE STORY expressed appreciation for the proposed solutions and questioned how affirmative consent laws had impacted other states that adopted them in stopping sexual assault and predatory behavior.

[1:52:12 PM](#)

REPRESENTATIVE TARR said there has been a national review of consent laws; however, most of the work on this issue is recent. She indicated that it's too early to understand the impact from the adoption of new laws in other states.

[1:53:31 PM](#)

REPRESENTATIVE CLAMAN conveyed his support for avoiding a victim-focused trial. He asked whether the proposed definition of consent would cause more focus on the victim and his/her history than the current law.

MS. WINSTON clarified that the burden would be shifted from the victim to the offender. Regarding the shift of focus to the victim's past behavior in a trial setting, she cited the rape shield law, which puts the use of past behavior as evidence to the discretion of a judge. She noted that if the behavior is recent and involves the same person, it could be used, but a prosecutor would evaluate the surrounding evidence and related components. She stated that cases "are apples and oranges" because each is unique. Ultimately, she opined that [the new

definition] would not cause a greater focus on the victim's previous behavior.

REPRESENTATIVE CLAMAN sought verification that Ms. Winston indicated that this bill is unlikely to change the focus that often occurs in sexual assault cases in any significant way compared to current law.

MS. WINSTON clarified that she did not mean to suggest that it won't change the focus. She explained that under the new definition of consent, there would be less focus on certain aspects of a victim's behavior than currently, because [the behavior] wouldn't meet the definition and could even be precluded from argument. She went on to state that in certain circumstances, the victim's prior behavior may be relevant as it relates to consent.

[1:59:14 PM](#)

REPRESENTATIVE CLAMAN referencing data from DOL, stated that "the percentage of declined sexual assault and sexual abuse cases statewide was running roughly 50 percent declined and about 50 percent taken for prosecution." He asked Ms. Winston if during her time actively prosecuting in a statewide supervisory role, the 50 percent declined case rate was consistent with her observations.

MS. WINSTON asked Representative Claman if his question pertains to all sex offenses or just the ones related to this bill.

REPRESENTATIVE CLAMAN replied all sex offenses.

MS. WINSTON noted that without specific numbers from 2004-2010 she could not definitely indicate a percentage; however, she recalled that the prosecution took around 65-70 percent and the remainder percentage was declined. She conveyed that the rate of decline was higher in some areas than others; for example, Sexual Abuse of a Minor cases were often declined because of the nature of the evidence.

[2:01:25 PM](#)

CHAIR KREISS-TOMKINS asked if the same case involving fraud and the fiancé's brother was referenced by both invited testifiers.

MS. WINSTON said she had not spoken with Ms. Olson to compare notes. She acknowledged that the cases they referenced sounded

similar. She further noted that in her case, she was unable to charge Sexual Assault in the First Degree for lack of consent because there wasn't a lack of consent that fit the definition. Sexual Assault in the Second Degree, however, encapsulates someone who is asleep or in an altered state and was therefore a better fit.

[2:04:01 PM](#)

BRIAN HOSKEN, Student Services Director, Alaska School Activities Association (ASAA), informed the committee that he is a former Anchorage School District administrator with nearly 30 years of experience overseeing comprehensive academics and activity/athletic programs. Currently, his primary role at the Alaska School Activities Association (ASAA) is to facilitate the Coaching Boys into Men (CBIM) program, which is in year two of a five-year grant. He relayed that CBIM is an evidence-based comprehensive violence prevention program designed to inspire coaches to teach their athletes the importance of respect for themselves, others, and women in particular. The program incorporates strategies, scenarios, and resources needed to talk with boys specifically about healthy and respectful relationships, dating violence, sexual assault, and harassment. Additionally, CBIM recognized that sports are "[tremendously]" influential on culture and the lives of young people and was designed to utilize and leverage the social capital held by athletes. He opined that the principles of teamwork and fair play, which are central to athletics, make sports an ideal platform to teach healthy relationship skills. He continued to explain that he trains coaches to teach a curriculum designed for a 12-week sports season in which weekly training lessons are presented from the coach to the athletes. These weekly teaching sessions include topics, such as personal responsibility, insulting language, disrespectful language towards women, digital disrespect, and understanding consent. He noted that he looks forward to further developing the definition of consent, adding that within the CBIM objective, consent is discussed in regard to respecting personal boundaries in intimate/sexual activities; furthermore, CBIM objects the use of pressure, threats, or force in any physical or sexual encounter and actively opposes incidents of rape, sexual coercion, and assault. He offered his belief that this bill would further define and help this particular teaching component. He went on to discuss the program goals specifically developed for Alaska by ASAA. He said that many of the topics incorporated by CBIM and HB 5 mutually validate the need for a preventative educational component and accountability for perpetrators. He

opined that the clarification and affirmative definition of consent in this legislation would strengthen the scholastic elements of CBIM. To conclude, he said he looks forward to the opportunity to employ a passed HB 5 in coordination with a statewide implementation of CBIM to further education Alaska's youth with the objective of eradicating violence towards women.

[2:09:17 PM](#)

CHAIR KREISS-TOMKINS questioned where in Alaska CBIM originated.

MR. HOSKEN replied that the CBIM program was developed in Sacramento, California and has since gone nationwide. He added that in Alaska, the program was first implemented in Juneau.

[2:10:54 PM](#)

REPRESENTATIVE STORY asked Ms. Ellanna how she helps her community understand the importance of the change being sought.

MS. ELLANA shared her understanding that most of the individuals who experienced assault and who were part of the effort to bring this concern forward had been assaulted while under the influence of alcohol or while asleep, in which case, consent is implied or inferred under current state law. She stated that understanding how the current law is written is extremely frustrating. She went on to add that if this bill were to pass, the new definition of consent would provide context for the police and their investigations, as well as a mechanism for district attorneys to hold perpetrators accountable.

[2:13:19 PM](#)

CHAIR KREISS-TOMKINS announced that HB 5 was held over.

^#hb55

HB 55-PEACE OFFICER/FIREFIGHTER RETIRE BENEFITS

[2:13:45 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 55, "An Act relating to participation of certain peace officers and firefighters in the defined benefit and defined contribution plans of the Public Employees' Retirement System of Alaska; relating to eligibility of peace officers and firefighters for medical, disability, and death benefits; relating to liability of the Public Employees'

Retirement System of Alaska; and providing for an effective date."

[2:14:21 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, prime sponsor, briefly reviewed HB 55 for the committee. He said the bill would restore a public safety PERS [Alaska Public Employee's Retirement System] defined benefit plan for the first time in 15 years to a segment of Alaska's workforce - a segment that, due to a lack of pension opportunities in this state, are leaving Alaska after "hundreds of thousands and millions of dollars" are spent by the state to train them effectively. He added that in the instances these workers stay in Alaska, they have inadequate funds to enjoy retirement in a reasonable way. He went on to discuss the main components of the bill, explaining that [public safety] workers would contribute a base of 8 percent as employee contribution to their own defined benefit, which could rise to 10 percent on command of the ARM [Alaska Retirement Management] Board. The total contribution would be 22 percent from the employer, which is identical to Tiers III and IV. He said the vesting would be five years; however, the provisions include a minimum retirement age of 55 with 20 years of service. Furthermore, to increase the plan's affordability, there is a "high five averaging to look back on their salary," as well as a post-retirement pension adjustment, which could be removed if the funding of the plan is less than 90 percent. He noted that currently, the overall system is not at 90 percent. He summarized the saving mechanisms, including the five-year averaging, the 10 percent base rate increase, and the absence of full medical coverage. For these reasons, he shared his belief that the bill is urgent.

[2:18:00 PM](#)

CHAIR KREISS-TOMKINS opened invited testimony.

[2:18:31 PM](#)

PAUL MIRANDA, President, Alaska Professional Fire Fighters Association (AKPFFA), introduced himself and informed the committee that he is currently an engineer at the Anchorage Fire Department. He introduced his associate, Tom Wescott.

[2:19:00 PM](#)

TOM WESCOTT, Alaska Professional Fire Fighters Association, introduced himself as the former president of AKPFFA and said he is available to answer questions from the committee.

[2:19:27 PM](#)

MR. MIRANDA introduced a PowerPoint presentation, titled "Costs of Maintaining the Status Quo." He said the purpose of today's presentation is to illustrate that Alaska is facing a public safety recruitment and retention crisis. He directed attention to slide 2, explaining that since Tier IV became effective in 2006, several unintended consequences became apparent for Alaska's public safety employees. He reported recruitment difficulties in Alaska's public safety agencies, such as Department of Public Safety (DPS), Department of Corrections (DOC), and municipal fire and police departments across the state. He said Alaska can no longer compete with the Lower 48 when attempting to recruit public safety employees. Police officers and paramedics are in high demand across the country and Alaska is at a clear disadvantage compared to other states with regard to retirement and benefits. He asserted that Tier IV is unlike any public safety retirement plan in the country, and it is part of the reason Alaskan communities struggle to fill public safety positions. He addressed impactful retention costs, which would be illustrated in later slides, adding that crucial dollars are being siphoned off while dealing with separations and a recruitment process that is made more difficult by the benefit package. He stated that once Alaska's agencies find an employee and invest time and money into him/her, there is a need to get a return on that investment. Additionally, he anticipated increased workers compensation costs as agencies become staffed with an older workforce that lacks the financial security to retire.

[2:22:02 PM](#)

MR. MIRANDA turned to slides 3 and 4, which featured testimony from police and fire chiefs that highlighted the difficulties surrounding recruitment and retention. He added that the state's own actuary assumes increased retention with HB 55. He addressed workers compensation costs on slide 5, noting that individuals under the Tier IV plan have not yet retired after working a full 20/25-year career in public safety because the plan is only 15 years old. He recalled a slide from the bill sponsor's presentation on 3/13/21 that detailed three independent reviews of Tier IV, all indicating that most of Alaska's public safety employees would not have enough money to

retire, even after a 30-year career. Additionally, many public safety employees do not participate in Social Security. He reported that the average hiring age of a public safety worker is 31; therefore, as agencies become staffed with an older workforce that lacks the financial security to retire, workers compensation costs are likely to increase due to the physical nature of the job and the likelihood that older public safety employees get injured at much higher rates. According to a Rand Corporation study on California firefighters, older firefighters are particularly prone to musculoskeletal disorders (MSDs) with an MSD injury rate that is more than double that of their younger colleagues and ten times greater than that of private-sector workers of the same age. In addition to the physical demand, he pointed out that individuals who are no longer mentally prepared to do the job should have the ability to leave for their own sake and for the good of the community they serve.

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MR. MIRANDA continued to slide 6 and outlined unforeseen costs, such as increased overtime due to inadequate staffing; increased training costs; loss of operational capabilities; loss of experience and future leadership; and rise in organizational stress levels. He moved to slide 7, which emphasized that recruitment and retention problems would likely increase. He reported that current recruitment and retention difficulties across Alaska are occurring with 40-50 percent of the workforce still in a defined benefit system; Tier IV currently makes up 50-60 percent of the public safety workforce and the problem would magnify as that population grows. He stated that a 100 percent portable public safety workforce is a frightening thought for chief officers around the state.

MR. MIRANDA turned to slide 8 and reported that there are 3,400 public safety employees in Alaska that the bill would be applicable to. He approximated \$120,000 as the average training cost, although some agencies, such as airport police and fire, report costs as high as \$240,000.

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CHAIR KREISS-TOMKINS inquired about the component costs of the \$120,000 figure.

MR. MIRANDA said it includes things like recruitment, testing/hiring processes, and training academy.

CHAIR KREISS-TOMKINS noted his curiosity in a cost/component breakdown. Nonetheless, he acknowledged that retention is a problem.

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MR. MIRANDA offered to follow up with that information. He resumed the presentation on slide 9, titled "what is the 'fiscal note' for maintaining the status quo?" He relayed that both DPS and DOC had testified to the legislature of non-retirement separations greater than 6 percent. He reminded the committee that this is occurring when Tier IV makes up less than 60 percent of the overall public safety workforce. He proceeded to examine the \$120,000 average training cost - not increased for inflation - and the costs of losing one, two, and three percent of a Tier IV workforce each year on slides 10-12. The cost of losing one percent of the workforce, or 34 employees, would be \$4,080,000 over a one-year period, \$20,400,000 over a five-year period, and \$81,600,000 over a 20-year period. The cost of losing two percent, or 68 employees, would be \$8,160,000 over a one-year period, \$40,800,000 over a five-year period, and \$160,200,000 over a 20-year period. Lastly, the cost of losing three percent of the workforce, or 102 employees, would be \$12,240,000 over a one-year period, \$61,200,000 over a five-year period, and \$244,800,000 over a 20-year period.

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MR. MIRANDA turned to slide 13/14 and said these costs are not fully representative of the problems that would result from non-retirement separation of public safety employees. He emphasized that current costs far outweigh the cost of HB 55, adding that a one percent improvement in retention would more than cover the cost of the bill. He further noted that other jurisdictions across the country have restored defined benefit systems after facing similar experiences. He moved to slide 15 and concluded by reiterating that both labor and management are united in their support for this legislation. He pointed out that everyone has a shared interest in ensuring that Alaska has quality public safety employees. He said adopting an adequate retirement plan with reasonable costs, fair benefits, and shared risk would aid in this mission.

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CHAIR KREISS-TOMKINS recalled that the bill had been painstakingly crafted to be cost-neutral. He asked for a refresher on the cost, if any, of this legislation.

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ELISE SORUM-BIRK, Staff, Representative Andy Josephson, Alaska State Legislature, said the Division of Retirement and Benefits had an actuary report conducted on the previous version of the bill and estimated that the annual cost would be \$3.5 million. She noted that the cost would be less money paid toward the unfunded liability. She expounded that under HB 55, a small amount more would be paid directly towards the employee's plan compared to the current plan; therefore, less would be paid to the unfunded liability. She added that the division would conduct a new actuarial analysis for the current version of the bill when it moves to the House Finance committee.

CHAIR KREISS-TOMKINS, as a Tier IV employee, asked if any of his compensation went to the unfunded liability. He sought further clarification on how [the proposed plan] differentiates from the status quo.

MS. SORUM-BIRK relayed that currently, employers pay the employee a certain percentage, which contributes to retirement. She cited an Alaskan law - SB 125; adopted in 2008 - which sets employer contribution rates for PERS and obligates the ARM Board to calculate total annual contributions required to maintain the plan's service liability each year. She said, for example, that the rate for PERS in Alaska this fiscal year was 30.85 percent and under current law, the employer contributes 22 percent with the state making up the difference if it's not a state employer.

CHAIR KREISS-TOMKINS interjected to verify that Ms. Sorum-Birk was speaking in reference to Tier IV.

MS. SORUM-BIRK answered yes. She continued to explain that a municipality pays 22 percent, which is divided between a portion that's paid to the employee and a portion that's paid into the retirement system going towards the unfunded liability - partially supplemented by the state.

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CHAIR KREISS-TOMKINS offered his understanding that every Tier IV beneficiary has a "lock box retirement system" that both the public sector and the employee contribute to, which is

completely removed from the defined benefit part of previous tiers. He said he is surprised to hear that part of people's benefits under Tier IV go towards paying the unfunded liability for people in Tiers I-III.

MS. SORUM-BIRK noted that only what the employer pays goes towards the unfunded liability.

CHAIR KREISS-TOMKINS asked if the contribution that goes towards the unfunded liability, represented by Tiers I-III, is the \$300 million or so odd dollars that the state pays every year.

MS. SORUM-BIRK answered, "in simple terms, yes." She added that sometimes the state chooses to supplement that.

CHAIR KREISS-TOMKINS said he is still unclear on how the state is fulfilling the obligation of paying down unfunded liability changes with the introduction of "Tier V."

MS. SORUM-BIRK replied the easiest way to think of it is that currently, a smaller percentage of the employer's 22 percent contribution is going towards the Tier IV employee than would go to the "Tier V" employee. She said employees under "Tier V" would receive 12 percent with 10 percent going toward the unfunded liability.

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REPRESENTATIVE STORY directed the committee to the state actuary report narrative [included in the committee packet], which provided a fiscal note analysis for the previous version of the bill. She asked if the pie graph on page 2 accurately depicts the figures being discussed.

MS. SORUM-BIRK answered yes.

REPRESENTATIVE STORY asked for confirmation that MS. Sorum-Birk had stated that the proposed retirement plan is comparable to packages offered by other states.

MS. SORUM-BIRK acknowledged that Washington is one of those states. She deferred to Mr. Wescott for further information.

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MR. WESCOTT said compared to other states, the proposed plan is a greatly reduced benefit from what Alaska had in the past;

additionally, it was modeled after the most well-functioning plans in the country that are fully funded, such as Washington and Wisconsin. He explained that aspects, such as the ability to raise employee rates and the ability to withhold inflation proofing, allow the plan to get back on track should it get behind and make the risk shared opposed to the state holding all the risk.

REPRESENTATIVE JOSEPHSON shared his understanding that Washington's plan proved so solvent that the age of retirement was reduced from 55 to 53. He asked if that is correct.

MR. WESTSCOTT confirmed [that the age of retirement was lowered in Washington].

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REPRESENTATIVE STORY questioned whether the size of the employee population in Washington impacted the ability to "drop" the payments.

MR. WESCOTT said he is unsure whether the population size had any significance. He acknowledged that the pool of public safety employees in Washington's system is larger than Alaska's. He recalled that historically, Anchorage's police and fire plan was widely successful and ahead of its time with only 800 employees. He explained that good and bad plans are separated by those that makes consistent, steady contributions in the good times, as well as the bad. Ultimately, he opined that the size doesn't matter if sound practices are followed.

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CHAIR KREISS-TOMKINS inquired about Alaska engaging in that in the past.

MR. WESCOTT explained that when looking at past contribution rates into PERS, there was a time in the early 2000s when Alaska thought it was better funded than it was, so employer contributions fluctuated significantly lower than today's rates. He said regardless of being fully funded or not, the proposed plan would continue making minimum contributions of 8 percent for the employee and 12 percent for the employer. He added that those who implemented Tier IV in 2005 recognize its shortcomings, especially in regard to public safety careers, which are shorter and involve physical and mental stresses.

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REPRESENTATIVE TARR recalled being a staff person during the transition to Tier IV, explaining that the legislature and leadership at that time implemented \$250 million in budget cuts over five years, which resulted in short funding the retirement system.

CHAIR KREISS-TOMKINS posited that in effect, there was an existing unfunded liability that needed to be paid down and the state elected not to. Nonetheless, he pointed out that the unfunded liability existed because Tiers I-III were not actuarial sound in the first place.

REPRESENTATIVE TARR agreed that it was a combination of both conjoined with economic downturns that exacerbated the problem, which explains why, under Governor Sean Parnell, there was a substantial deposit in an attempt to catch up.

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REPRESENTATIVE JOSEPHSON said the actuarial negligence can't be understated or overstated. He reported that according to Legislative Finance Division, the settlement was \$500 million on that item alone. He offered his belief that the proposed plan "[hits] the sweet spot."

CHAIR KREISS-TOMKINS sought clarification on whether Representative Josephson had said the actuarial negligence of Tiers I-III can or cannot be overstated.

REPRESENTATIVE JOSEPHSON clarified that [the actuarial negligence] was severe. He offered his understanding that there was a lack of vigilance and advice was taken by an actuary who failed [the state] as evidenced by the settlement.

CHAIR KREISS-TOMKINS said he feels reassured by what seems to be extremely aggressive diligence. He stated that there was unbelievable intergenerational injustice between Tiers I-III, adding that the amount of money spent by his generation and those younger to subsidize the negligence of Tiers I-III each year could pay for pre-kindergarten and free college for every Alaskan. He emphasized the importance of ensuring that the proposed plan is fully actuarially sound for future generations and reiterated his increasing confidence that it is [actuarially sound].

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REPRESENTATIVE JOSEPHSON noted that the legislation mentioned by Representative Tarr has been "re-amortized," as it was \$700 million per year and is currently \$350 million per year. He reported that the unfunded liability decreased from \$11 billion to approximately \$6.5 billion.

CHAIR KREISS-TOMKINS surmised that the actuarial negligence and incompetence was in addition to wishful political thinking, which hurt the state and future generations.

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REPRESENTATIVE STORY related that teachers under the new tier are also lacking Social Security, which has similarly resulted in retention difficulties across the state. She questioned whether expanding the proposed plan to all public employees was considered.

REPRESENTATIVE JOSEPHSON said he is aware and sympathetic to it, adding that a new report from two months ago indicated that it could be done with some degree of security. He pointed out that there are unique circumstances associated with the [public safety] cohort in addition to the huge training cost born by the state. He offered his belief that the [public safety] cohort would have more support and could lead the way, adding that if solvency is proven over a short number of years, an opportunity could present itself.

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CHAIR KREISS-TOMKINS, regarding the "Tier V" plan's HRA [health reimbursement arrangement], asked for the analysis on how sustainable three percent set aside for health is - relative to projections for cost of health care, especially accounting for the rapidly escalating projections.

REPRESENTATIVE JOSEPHSON said it is a major "give" from the stakeholders because they are aware of its cost and unpredictability. He deferred to Ms. Sorum-Birk for further explanation.

MS. SORUM-BIRK relayed that the HRA would act as a stopgap, adding that the new tier would have the same HRA as Tier IV and could be used to pay for medical expenses or to pay premiums. She explained that it's based off a three percent average PERS

salary, which is significantly lower than the average public safety PERS salary.

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MR. MIRANDA confirmed the comments from Ms. Sorum-Birk and Representative Josephson. He pointed out that the explosion in health care costs was a contributing factor to the unfunded liability of the previous tiers. He calculated that based on the current cost of pre-Medicare coverage, the HRA would cover between 3-5 years of medical premiums. There would still be a gap for most individuals, but the bill recognizes the unwanted possibility of creating an unfunded liability, which is why it removes the pre-Medicare medical coverage that was in the previous defined benefit tiers. He added that employees can look for ways to bridge the gap between retirement age and eligibility age - the HRA would help with that, but it wouldn't be a total solution.

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CHAIR KREISS-TOMKINS announced that HB 55 was held over.
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ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 3:07 p.m.